PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Attorney Docket No.: 14781US02

In the Application of:

Jeyhan Karaoguz, *et al.*

Serial No.: 10/672,654

Filed September 26, 2003

For: MEDIA EXCHANGE NETWORK HAVING MEDIA PROCESSING SYSTEMS AND PERSONAL COMPUTERS WITH COMMON USER INTERFACES

Filed Electronically on September 23, 2010

Examiner: LUONG, ALAN H.

Group Art Unit: 2427

Confirmation No.: 8222

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets.

Respectfully submitted,

Date: September 23, 2010

By: /Joseph M. Butscher/
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REMARKS

The present application includes claims 1-7, 9-19, 21-31, and 33-40, all of which remain rejected. However, as explained below, the Final Office Action does not establish a *prima facie* case of unpatentability with respect to any of the pending claims.

The Applicants demonstrate that the Office Action does not establish that the proposed combination of Ellis in view of Schoen and Parker renders claims 1-7, 9-19, 21-31, and 33-40 unpatentable. *See* April 21, 2010 Amendment at pages 12-23.

First, claim 1 recites, in part, "[a] system supporting the communication and consumption of media using a common user interface, the system comprising: … software resident in a first memory at the first home and a second memory at the second home, the software enabling a user at the first home to construct, at the first home, the one or more media channels from user selected and scheduled media content, the software also enabling closed and secure communication of the one or more media channels to members of a user group, in a peer to peer manner, from the first home to the second home." Independent claims 14 and 25 recite similar limitations. The Office Action does not establish that the cited references describe, teach, or suggest all of these limitations. *See id.* at pages 13-23.

The Applicants demonstrate that the portions of Ellis that the Office Action relies upon do not describe, teach, or suggest the limitations that the Office Action asserts that they do. *See id.* at pages 13-21. This represents an example of clear error within the Office Action that precludes a *prima facie* case of unpatentability from being established.

The Applicants analyze all portions of Ellis selected by the Office Action as disclosing "software resident in a first memory at the first home and a second memory at the second home, the software enabling a user at the first home to construct, at the first home, the one or more media channels from user selected and scheduled media content…," and demonstrate that, contrary to the assertions in the Office Action, Ellis does not describe, teach, or suggest at least these aspects of claim 1. *See id.* at pages 13-21.

Additionally, claim 1 recites, in part, …"the software also enabling closed and secure communication of the one or more media channels to members of a user group, in a peer to peer manner, from the first home to the second home."

The Office Action states that "Ellis is unclear with respect to '**the software also enabling closed and secure communication of the one or more media channels to members of a user group, in a peer to peer manner, from the first home to the second home**'." (emphasis in original). *See* June 30, 2010 Office Action at page 7. The Applicants respectfully submit that Ellis is more than "unclear," as Ellis simply does not describe, teach, or suggest at least this aspect claim 1.

Nevertheless, the Office Action mistakenly relies upon Schoen to buttress Ellis with respect to this limitation. *See id.* However, the Applicants demonstrate that the Office Action's reliance on Schoen is also in error. *See* April 21, 2010 Amendment at pages 21-23.

The term "peer to peer" is not present anywhere in the cited portions of Schoen, or anywhere else in the text or figures of Schoen. Yet, the Office cites language from Schoen, but fails to provide any explanation as to how and why the text copied from Schoen, which does not mention the phrase "peer to peer", teaches "peer to peer" communication, as claimed. Instead, the Office merely repeats language from claim 1, inserts pieces of text from the cited portion of Schoen, and adds a citation to a portion of Schoen. For at least these additional reasons, the Office Action has not established a *prima facie* case of obviousness with respect to claim 1 and the claims depending therefrom.

Moving on, the Office Action rejects claim 14 by stating "[r]egarding claim 14: recites the features similar to those of claim 1. Therefore, claim 14 is rejected for the same reason as discussed in claim 1." *See* June 30, 2010 Office Action at page 13. The Office Action employs the same tactic with respect to independent claim 25. *See id.* Thus, for at least the reasons discussed above, the Applicants respectfully submit that the Office Action has not established a *prima facie* case of unpatentability with respect to claims 14, 25, or the claims depending therefrom.

For at least the reasons set forth above, the Office Action has not established a *prima facie* case of unpatentability with respect to any of the pending claims.

The Commissioner is hereby authorized to charge any necessary fees**, including the $540 fee for the Notice of Appeal**, due in connection with this Paper, or credit any overpayment, to Deposit Account No. 13-0017.

Respectfully submitted,

Date: September 23, 2010

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